

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

Item 20

AGENDA ID #14470

RESOLUTION E-4743 (Rev.1)

December 17, 2015

R E S O L U T I O N

Resolution E-4743. Pacific Gas & Electric Co. Notice of Construction of the Panoche Valley Solar Interconnection and Switching Station Project.

PROPOSED OUTCOME:

- Upholds Staff's Determination approving PG&E's request for an exemption from the Certificate of Public Convenience and Necessity requirements of General Order 131-D and dismisses all protests as invalid.

SAFETY CONSIDERATIONS:

- There is no specific impact on safety.

ESTIMATED COST:

- There is no significant cost impact specific to the Advice Letter.

By Advice Letter 4648-E filed on June 12, 2015.

SUMMARY

By Advice Letter (AL) 4648-E, filed on June 12, 2015, Pacific Gas & Electric Co. (PG&E) submitted a Notice of Construction (NOC), pursuant to General Order (GO) 131-D, for the construction of the Panoche Valley Solar Interconnection and Switching Station Project (PG&E Upgrades) in the Counties of San Benito and Fresno. Staff determined that the facilities proposed to be constructed by PG&E met the criteria for an exemption from the Certificate of Public Convenience and Necessity (CPCN) requirements for electric transmission line facilities rated at 200 kV or more pursuant to Section III.A of GO 131-D. Protesting groups asked

that the Commission reconsider staff's determination, necessitating this Resolution.

In this Resolution, the Commission upholds staff's determination that the facilities proposed for construction do not require the Commission to issue a CPCN and that the protests to the Advice Letter are invalid.

BACKGROUND

GO 131-D governs the planning and construction of electric generation, transmission/power/distribution line facilities and substations located in California for investor owned utilities.

PG&E Interconnection Project

AL 4648-E, filed by PG&E on June 12, 2015, requests to interconnect the proposed Panoche Valley Solar Project, developed by Panoche Valley Solar, LLC (previously, Solargen, Inc.) to the existing Moss Landing-Panoche #2 230 kilovolt (kV) Transmission Line and the existing Coburn-Panoche 230 kV Transmission Line. The two transmission lines are located within a 230 kV double-circuit transmission line corridor. The solar developer is proposing to construct a new approximately 8-acre switching station and microwave tower in San Benito County and transfer ownership to PG&E. The switching station would be located adjacent to the proposed solar facility, which is located immediately west of the intersection of Little Panoche Road and Vasquez Creek Road, approximately 14.5 miles west of the intersection of Interstate 5 and West Panoche Road.

To interconnect the new switching station, PG&E will relocate and loop approximately 1,600 feet of the existing Moss Landing-Panoche #2 230 kV Transmission Line and 1,400 feet of the existing Coburn-Panoche 230 kV Transmission Line into and out of the switching station. PG&E will interconnect approximately four new tubular steel poles in the existing tower line alignment and install approximately four new tubular steel poles to the north of the existing tower line adjacent to the switching station. The new poles will be approximately 100 and 125 feet tall (approximately 10 feet taller than the existing

towers) to meet GO 95 minimum ground-to-conductor clearance requirements. In addition, a new telecommunications optical ground wire (OPGW), supported by peak extensions, will be installed along the top of the existing transmission line between the new switching station and PG&E's Panoche Substation located approximately 17 miles east of Panoche Valley in Fresno County. Two towers will be raised by approximately 16-foot extensions to accommodate the OPGW. PG&E will also install a microwave communications system as a secondary communications system, locating equipment on existing microwave towers at Call Mountain and Panoche Mountain, and constructing a new approximately 100-foot-tall microwave tower at the existing Helm Substation.

California Environmental Quality Act (CEQA) Review

San Benito County completed the environmental review of the Panoche Valley Solar Project and PG&E Upgrades on May 20, 2015 with the filing of the Notice of Determination certifying the Supplemental Environmental Impact Report (SEIR). The SEIR evaluated the construction activities requested by PG&E in AL 4648-E and found no significant unavoidable environmental impacts caused by those activities.

Applicability of GO 131-D

GO 131-D, Section III.A exempts projects that meet specific conditions from the requirements to file an application requesting a CPCN. GO 131-D, Section III.B.1 exempts projects that meet specific conditions from the requirements to file an application requesting a Permit to Construct (PTC). PG&E believes this project qualifies for the following exemptions:

III.A. "the minor relocation of existing power line facilities" and

III.B.1.f. "power lines or substations to be relocated or constructed which have undergone environmental review pursuant to CEQA as part of a larger project, and for which the final CEQA document (Environmental Impact Report or Negative Declaration) finds no significant unavoidable environmental impacts caused by the proposed line or substation."

The Commission's Energy Division issued a letter of disposition approving PG&E's request on August 18, 2015. A timely request for Commission review of the disposition was properly filed and served on August 28, 2015, pursuant to GO 96-B, General Rule 7.7.1.

NOTICE

PG&E issued notice of AL 4648-E in compliance with GO 131-D, Sections XI.B and XI.C.

PROTESTS

A timely protest to AL 4648-E was submitted by Audubon California, Defenders of Wildlife, Santa Clara Valley Audubon Society and the Sierra Club (collectively, Protestants) on July 2, 2015. PG&E replied on July 9, 2015. The protest claims that: 1) PG&E incorrectly applied for an exemption from the Commission's requirement to file an application requesting authority to construct because environmental review is not complete, and 2) conditions that would limit use of this exemption, as set out in GO 131-D Section III.B.2, exist. The protest requests an evidentiary hearing to resolve factual disputes.

Appeal of Energy Division Disposition

Protestants filed a request for Commission review of Energy Division's disposition on August 28, 2015 repeating their prior argument. Protestants claim: 1) the disposition's finding – that exceptions to the GO 131-D exemption were not applicable because final CEQA review is complete – was not supported by evidence in light of the entire record and 2) the disposition is erroneous because there is a reasonable possibility the Panoche Interconnection Project may impact the Ciervo-Panoche Core Recovery Area.

DISCUSSION

In its letter of disposition, Energy Division found that, consistent with

Commission precedent,¹ PG&E's proposal to relocate and loop approximately 3,000 feet of transmission line into and out of the switching station does not require a CPCN pursuant to GO 131-D Section III.A. The proposed PG&E Upgrades are not major electric transmission line facilities and thus, do not require PG&E to file a formal application with the Commission.

Energy Division also considered the Protestants claim that since environmental review is still underway, the project does not qualify for an exemption pursuant to GO 131-D, Section III.B.2. As stated previously, San Benito County has completed the environmental review. Protestants' legal challenge against San Benito County's SEIR does not prohibit PG&E from requesting an exemption to the application requirements of GO 131-D under Section III.B.1.f. The State of California's CEQA Guidelines directly address this situation.

CEQA Guidelines Section 15233 states,

"if a lawsuit is filed challenging an EIR or Negative Declaration for noncompliance with CEQA, Responsible Agencies shall act as if the EIR or Negative Declaration complies with CEQA and continue to process the application for the project according to the time limits for Responsible Agency action contained in Government Code Section 65952."

Even though the Commission is not acting as a Responsible Agency in this instance, the proposition stands that a pending legal challenge to the SEIR does not support a presumption that the document fails to comply with CEQA.

GO 131-D contains exceptions to exemptions under Section III.B.2. If the exceptions apply, then PG&E may not claim a valid exemption. Protestants claim that the conditions specified in GO 131-D Section III.B.2 exist, namely 1) there is a possibility that the project will have an impact on an environmental

¹ See Assigned Commissioner's Scoping Memo and Ruling in Application (A.) 10-11-012 issued February 25, 2011 at p. 4 and Decision 11-07-020 issued July 14, 2011 at p. 2.

resource of hazardous or critical concern, 2) the cumulative impact of successive projects is significant, and 3) unusual circumstances are present that would create a significant effect. San Benito County's SEIR concluded that all work related to PG&E's Upgrades causes adverse impacts that are less than significant (Class III). The SEIR did identify significant and unmitigable impacts (Class I) and significant impacts, mitigable to less than significant with mitigation (Class II), associated with the Panoche Valley Solar Project.² Thus, none of these exceptions are applicable to AL 4648-E because they only apply in instances where there is a possibility of a significant environmental impact and this possibility does not exist with PG&E's Upgrades. Here, the record demonstrates that the PG&E's proposed facilities will not have a significant environmental impact.

Thus, the Commission finds that PG&E demonstrated that the project complies with GO 131-D Section III.A and the Protestants failed to demonstrate in their initial protest or the appeal that any of the conditions for a valid protest pursuant to GO 131-D Section III.B.2 exist.

The Commission reiterates the fact that final CEQA review by San Benito County, acting as Lead Agency, is complete. In addition, the proposed work relevant to PG&E's Upgrades is not subject to the requirements of GO 131-D, Section III.B because there are no significant impacts to the environment as a result of the project. San Benito County's SEIR provided sufficient evidence for staff to support its determination that the project was exempt from the GO 131-D permitting requirements. While the Commission understands that there is a legal challenge to the adequacy of the SEIR, this is not a valid reason to suspend processing of PG&E's Advice Letter. If the SEIR is overturned, PG&E should notify the Commission immediately so that we may reassess the applicable permitting requirements.

² San Benito County Final Supplemental Environmental Impact Report. Executive Summary at p. 25. State Clearinghouse No. 2010031008. April 2015

Thus, the Commission upholds the disposition of the Energy Division and denies the Protestants' claims for failure to state a valid protest. AL 4648-E is approved, effective with the date of the staff disposition letter of August 18, 2015.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly, this draft resolution was mailed to PG&E and Protestants for at least 30 days of comment prior to being placed on the Commission's voting agenda. No comments were received.

FINDINGS

1. Pacific Gas & Electric Co. filed AL 4648-E on June 12, 2015 requesting approval for the construction of the Panoche Valley Solar Interconnection and Switching Station Project in the Counties of San Benito and Fresno.
2. The Advice Letter was protested by Audubon California, Defenders of Wildlife, Santa Clara Valley Audubon Society and the Sierra Club on July 2, 2015.
3. Energy Division approved AL 4648-E on August 18, 2015 finding that the protest to the Advice Letter was invalid.
4. A request for Commission review of the disposition was filed on August 28, 2015 by Audubon California, Defenders of Wildlife, Santa Clara Valley Audubon Society and the Sierra Club.
5. The County of San Benito certified a Supplemental Environmental Impact Report on May 20, 2015 concerning the activities requested in Advice Letter 4648-E.
6. The Supplemental Environmental Impact Report found no significant unmitigable environmental impacts associated with the activities requested in Advice Letter 4648-E.
7. General Order 131-D governs permitting of major electric transmission line facilities which are designed for operation at 200 kilovolts or more.

8. Pacific Gas & Electric Co. may file an Advice Letter to notify the Commission of the planned construction of facilities that are not considered “major” under General Order 131-D, Section III.A.
9. The section of 1,600 feet of the existing Moss Landing-Panoche #2 230 kilovolt (kV) Transmission Line and the section of 1,400 feet of the existing Coburn-Panoche 230 kV Transmission Line to be relocated as part of the Panoche Valley Solar Interconnection and Switching Station Project do not comprise a major electric line transmission facility, consistent with Commission precedent.
10. The conditions listed in General Order 131-D, Section III.B.2 as exceptions to the exemptions do not apply to Advice Letter 4648-E as demonstrated by the County of San Benito’s Supplemental Environmental Impact Report.
11. The protest filed by Audubon California, Defenders of Wildlife, Santa Clara Valley Audubon Society and the Sierra Club on July 2, 2015 is not valid because it fails to demonstrate that any of the conditions of General Order 131-D, Section III.B.2 exist.
12. The request for Commission review filed by Audubon California, Defenders of Wildlife, Santa Clara Valley Audubon Society and the Sierra Club on August 28, 2015 is not valid because the Energy Division relied on sufficient evidence in the record to deny the protests and approve the Advice Letter.
13. Resolution E-4743 was mailed to PG&E and all Protestants for 30 days of public comment. No comments were received.

THEREFORE IT IS ORDERED THAT:

1. Staff’s determination that the facilities proposed for construction do not require the Commission to issue a CPCN and that the protests to the Advice Letter are invalid is hereby upheld.
2. Pacific Gas & Electric Co. Advice Letter 4648-E is approved effective as of August 18, 2015, the date of Energy Division’s letter of disposition.
3. Pacific Gas & Electric Co. shall inform the Commission’s Energy Division within 10 days in the event of an adverse judgment in the pending litigation

concerning the Supplemental Environmental Impact Report for the Panoche Valley Solar Project.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on December 17, 2015; the following Commissioners voting favorably thereon:

TIMOTHY J. SULLIVAN
Executive Director